

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**THE GENERAL ELECTRIC COMPANY, *et al.*,**

**Plaintiffs,**

**v.**

**Civil Action No. 1:10-CV-00404**

**UNITED STATES OF AMERICA, *et al.*,**

**Defendants.**

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**UNITED NUCLEAR CORPORATION'S ANSWER  
TO THE UNITED STATES' COUNTERCLAIMS**

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Counterclaim-Defendant United Nuclear Corporation ("UNC"), through undersigned counsel, files this Answer to the Counterclaims the United States<sup>1</sup> filed on April 25, 2011. Any allegation not specifically admitted below is denied. Answering the numbered paragraphs of the United States' Counterclaims (Docket No. 35), UNC admits, denies, and avers as follows:

1. Paragraph 1 contains Counterclaim-Plaintiffs' characterization of their Counterclaims to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

2. Paragraph 2 contains Counterclaim-Plaintiffs' characterization of their Counterclaims to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

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<sup>1</sup> The United States filed counterclaims on behalf of itself and all Defendants in this case, namely the United States Department of the Interior, the United States Bureau of Indian Affairs, the United States Department of Energy, the United States Nuclear Regulatory Commission, and the United States Environmental Protection Agency. For convenience, this Answer will refer collectively to Defendants as "Counterclaim-Plaintiffs."

3. Paragraph 3 contains Counterclaim-Plaintiffs' characterization of their Counterclaims to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

4. UNC admits the allegations of Paragraph 4 regarding the identities of the Counterclaim-Plaintiffs.

5. UNC admits that it alleges that UNC is a Delaware Corporation with its principal place of business in Gallup, New Mexico.

6. UNC admits that it alleges that The General Electric Company ("GE") is a New York Corporation with its principal place of business at One River Road, Schenectady, New York.

7. Paragraph 7 contains Counterclaim-Plaintiffs' characterization of their Counterclaims to which no response is required.

8. Paragraph 8 states a conclusion of law regarding the Court's jurisdiction to which no response is required.

9. Paragraph 9 states a conclusion of law regarding venue to which no response is required.

10. Paragraph 10 purports to summarize section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a). CERCLA speaks for itself and is the best evidence of its content. Any allegations to the contrary of that best evidence are denied.

11. Paragraph 11 purports to state a definition set forth in CERCLA. CERCLA speaks for itself and is the best evidence of its content. Any allegations to the contrary of that best evidence are denied.

12. Paragraph 12 purports to summarize CERCLA section 113(f)(1), 42 U.S.C. § 9613(f)(1). CERCLA speaks for itself and is the best evidence of its content. Any allegations to the contrary of that best evidence are denied.

13. Paragraph 13 purports to summarize CERCLA section 113(f)(1), 42 U.S.C. § 9613(f)(1). CERCLA speaks for itself and is the best evidence of its content. Any allegations to the contrary of that best evidence are denied.

14. UNC admits that the Northeast Church Rock Mine (“NECR site”) is located in McKinley County, New Mexico, northeast of Gallup, New Mexico.

15. UNC admits that from 1967 through 1982 it operated a uranium mine at the NECR site and that its mining activities included digging two underground mine shafts. The allegations of Paragraph 15 regarding the “construction of water extraction and treatment facilities” are vague and ambiguous because they do not provide sufficient information regarding the identity of such facilities to permit UNC to verify the truth or falsity of those specific allegations. UNC therefore denies the allegations regarding the construction of water extraction and treatment facilities.

16. UNC admits that it processed uranium ore extracted from the NECR Site at its mill located on adjacent property, known as the United Nuclear Corporation Superfund Site pursuant to a license issued by the U.S. Nuclear Regulatory Commission, and predecessor agency, the U.S. Atomic Energy Commission, pursuant to the Atomic Energy Act of 1954, as amended. UNC lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations in the second and third sentences of Paragraph 16 and therefore denies those allegations.

17. UNC lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations in Paragraph 17 and therefore denies those allegations.

18. UNC admits that waste rock or “overburden” extracted as part of the mining process are present on the NECR site. UNC admits that some of this waste rock contains a low amount of naturally occurring uranium and associated naturally occurring mineral substances. UNC otherwise denies the allegations in paragraph 18 as vague and ambiguous. The allegations in the first sentence of Paragraph 18 are vague and ambiguous because they do not provide sufficient information regarding identity of “sediment settling ponds” and “mine equipment debris” to permit UNC to verify the truth or falsity of the allegations. UNC therefore denies those allegations in the first sentence of Paragraph 18. The allegations in the third sentence of Paragraph 18 are vague and ambiguous because they do not provide sufficient information regarding the meaning of “associated radioactive materials” and “other heavy metals” to permit UNC to verify the truth or falsity of those allegations. UNC therefore denies the allegations in the third sentence of Paragraph 18. The allegations of the fourth sentence of Paragraph 18 are vague and ambiguous because they do not provide sufficient information regarding the meaning of “spread throughout and adjacent to the Site by wind and water processes” to permit UNC to verify the truth or falsity of the allegations. UNC therefore denies the allegations in the fourth sentence of Paragraph 18.

19. UNC denies the allegations in Paragraph 19 because they are vague and ambiguous. The allegations in Paragraph 19 do not provide sufficient information regarding the meaning of the words “small community,” “adjacent,” “downstream,” and “downwind” to permit UNC to verify the truth or falsity of the allegations.

20. UNC admits that it conducted a Removal Site Evaluation pursuant to a September 2006 EPA Administrative Order on Consent. UNC admits that it carried out substantial screening and sampling activities, but lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations in the second sentence of Paragraph 20 and therefore UNC denies those allegations. The allegations in the third sentence of paragraph 20 are vague and ambiguous because they do not provide sufficient information regarding the meaning of “heavy concentrations” to permit UNC to verify the truth or falsity of the allegations. UNC therefore denies the allegations in the third sentence of paragraph 20.

21. Paragraph 21 states a conclusion of law to which no response is required.

22. Paragraph 22 states a conclusion of law to which no response is required.

23. Paragraph 23 states a conclusion of law to which no response is required.

24. Paragraph 24 states a conclusion of law to which no response is required.

25. Paragraph 25 states conclusions of law to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

26. Paragraph 26 states a conclusion of law to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

27. UNC admits the allegations in Paragraph 27.

28. UNC lacks sufficient information to form a belief as to the truth or falsity of the factual allegations in Paragraph 28 and therefore denies those allegations. To the extent that the allegations in Paragraph 28 are conclusions of law, no response is required.

29. Paragraph 29 states a conclusion of law to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

30. UNC lacks sufficient information to form a belief as to the truth or falsity of the factual allegations in Paragraph 30, and therefore denies those allegations. To the extent that the allegations in Paragraph 30 are conclusions of law, no response is required.

**First Counterclaim: Contribution**

31. UNC incorporates its responses to Paragraphs 1 through 30, inclusive, as though fully set forth herein.

32. UNC admits that it has filed a civil action against the United States alleging liability and seeking recovery of costs incurred and to be incurred under CERCLA section 107(a), 42 U.S.C. § 9607(a). The rest of Paragraph 32 states conclusions of law to which no response is required.

33. Paragraph 33 states conclusions of law to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

**Second Counterclaim: Cost Recovery**

34. UNC incorporates its responses to Paragraphs 1 through 30, inclusive, as though fully set forth herein.

35. Paragraph 35 states conclusions of law to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

36. Paragraph 36 states conclusions of law to which no response is required; insofar as it is deemed to contain factual allegations, those allegations are denied.

**Prayer for Relief**

The remaining allegations of the Counterclaims against UNC consist of Counterclaim-Plaintiffs' Prayer for Relief, to which no response is required, but to the extent it is deemed to include allegations of fact, those allegations are denied. UNC denies that the Counterclaim-

Plaintiffs are entitled to any relief whatsoever, and respectfully prays that the Counterclaims be dismissed with prejudice in their entirety.

### **AFFIRMATIVE DEFENSES**

1. Each of the Counterclaim-Plaintiffs' claims should be dismissed for failure to state a claim.

2. Counterclaim-Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations, including but not limited to 42 U.S.C. § 9613(g).

3. Counterclaim-Plaintiffs' claims are barred because Counterclaim-Plaintiffs' actions caused or contributed to the alleged injuries, damages, and costs.

4. Counterclaim-Plaintiffs' CERCLA claims are barred to the extent the alleged costs were not incurred in response to the release or threatened release of a "hazardous substance" as defined 42 U.S.C. § 9601(14).

5. Counterclaim-Plaintiffs' CERCLA claims are barred to the extent the costs allegedly incurred or to be incurred by them are not recoverable costs of "removal action," "remedial action," or "response" pursuant to 42 U.S.C. §§ 9601(23), (24), and (25) and 9607(a)(4)(A) and (B).

6. Counterclaim-Plaintiffs' CERCLA claims are barred to the extent the costs allegedly incurred by them are arbitrary and capricious and not consistent with the NCP, 40 C.F.R. Part 300 et seq.

7. Counterclaim-Plaintiffs' claim against UNC for joint and several liability is barred because Counterclaim-Plaintiffs themselves are liable or responsible parties under CERCLA and the environmental harm allegedly caused by UNC is divisible or UNC's liability for such harm, if any, is capable of reasonable apportionment.

8. To the extent that the Counterclaim-Plaintiffs seek to recover any amounts from UNC under CERCLA section 107 in excess of UNC's equitably allocated share as determined by this Court, UNC is entitled to contribution from Defendants pursuant to 42 U.S.C. § 9613(f)(1) to recover the excess amount. Pursuant to § 9613(f), any allocation of response costs to the United States should be limited in accordance with the various equitable factors used to allocate costs and damages among parties.

9. UNC's liability, if any, should be zero pursuant to 42 U.S.C. § 9613(f) because of equitable reasons because UNC's mining and waste activities at the NECR Site were authorized by the United States and consistent with the conventional uranium mining and waste disposal practices at the time that the activities occurred, and because Counterclaim-Plaintiffs failed to mitigate any harm or releases from the Site.

10. UNC is not liable for any CERCLA response costs because all damages as between UNC and the Counterclaim-Plaintiffs in this action are divisible and consequently apportionable to Counterclaim-Plaintiffs.

11. Pursuant to 42 U.S.C. § 9607(j), UNC is not liable under CERCLA for any response costs to the extent the alleged releases were "federally permitted" under 42 U.S.C. § 9610(10).

UNC reserves the right to assert additional defenses that may be appropriate as revealed during the course of this litigation.

WHEREFORE, UNC prays as follows:

1. That the Counterclaims be dismissed with prejudice and Counterclaim-Plaintiffs recover nothing thereon;
2. That judgment be entered in UNC's favor;



3. That UNC be awarded the costs of suit; and,
4. For such other relief as the Court deems just and proper.

Dated: May 19, 2011

Respectfully submitted,

/s/ Michael Campbell

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*Attorneys for Plaintiffs General Electric  
Company and United Nuclear Corporation*

#### **CERTIFICATE OF SERVICE**

I certify that I have effected electronic service of this pleading on counsel of record in this proceeding, utilizing the Court's CM/ECF program.

/s/ Michael Campbell

Michael Campbell